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EXHIBIT

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<u>COUNT</u>	<u>DESCRIPTION</u>	<u>LEGAL DEFENSE</u>
Count I	DHS Instruction Manual (internal guidance for NEPA compliance)	Not final agency action
Count II – Action 1	INS Legal Opinion 98-10 (authority to Parole Applicants)	Not final agency action Barred by SOL
Count II – Action 2	January 2010, Directive 11002.1 (parole of arriving aliens with a credible fear)	Not final agency action Barred by SOL
Count II – Action 3	November 15, 2013, Policy Memorandum 602-0091, (parole-in-place program for relatives of military members and veterans)	Not final agency action
Count II – Action 4	November 2014 Memorandum (expands eligibility for the military parole program)	Not final agency action
Count II – Action 5	October 27, 2011, announcement (creation of parole for caregivers of critical medical or special needs individuals)	Not final agency action
Count II – Action 6	November 2014 Directive (to provide consistency regarding advance parole)	Not final agency action
Count II – Action 7	July 26, 2016, announcement of the Central American Minors Refugee and Parole Program	Not final agency action Partially moot
Count II – Action 8	December 18, 2014 Haitian Family Reunification Parole Program	Not final agency action
Count II – Action 9	Categorical Exclusion determination in issuing a final rule on parole for “international entrepreneurs” at 82 FR 5238-01	Not the subject of this motion to dismiss
Count II – Action 10	8 U.S.C. § 1254a (temporary protected status to individuals from certain countries)	Review precluded by statute
Count II – Action 11	Presidential authority and discretion to authorize Deferred	Review precluded by statute

	Enforced Departure as part of his power to conduct foreign relations	
Count II – Action 12	March 2, 2011, DHS Policy Memorandum 10072.1 titled “Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens.”	Not final agency action Moot
Count II – Action 13	June 17, 2011, DHS Policy Memorandum 10075.1 titled “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens.”	Not final agency action Moot
Count II – Action 14	June 17, 2011, DHS Policy Memorandum 10076.1 titled, “Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs.”	Not final agency action
Count II – Action 15	November 11, 2011, DHS Memorandum, titled “Case by Case Review of Incoming and Certain Pending Cases,” and its two Attachments.	Not final agency action Moot
Count II – Action 16	November 7, 2011, DHS Policy Memorandum 602-055 titled “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens.”	Not final agency action
Count II – Action 17	December 29, 2011, announcement of a new detainer form	Not final agency action Moot

Count II – Action 18	December 12, 2012, DHS Memorandum titled “Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems.”	Not final agency action Moot
Count II – Action 19	Two memoranda issued on June 15, 2012, titled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” and “Secretary Napolitano’s Memorandum Concerning the Exercise of Prosecutorial Discretion for Certain Removable Individuals Who Entered the United States as a Child” (“DACA”).	Moot
Count II – Action 20	November 13, 2013, DHS Policy Memorandum 602-0093 titled “Adjudication of Adjustment of Status Applications for Individuals Admitted to the United States Under the Visa Waiver Program.”	Not final agency action
Count II – Action 21	November 20, 2014, DHS Memorandum titled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents.”	Moot
Count II – Action 22	November 20, 2014, DHS Memorandum titled “Exercising Prosecutorial Discretion with	Moot

	Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents.”	
Count II – Action 23	November 20, 2014, DHS Memorandum titled “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants.”	Moot
Count II – Action 24	November 20, 2014, DHS Memorandum titled “Secure Communities.”	Moot
Count II – Action 25	January 3, 2013, publication of rule in the Federal Register (78 Fed. Reg. 536-01, codified at 8 C.F.R. § 212.7)	Review precluded by statute
Count II – Action 26	July 29, 2016, publication of rule in the Federal Register (78 Fed. Reg. 536-01, codified at 8 C.F.R. § 212.7)	Review precluded by statute
Count II – Action 27	April 30, 2009, DHS Memorandum titled “Worksite Enforcement Strategy.”	Not final agency action Barred by SOL
Count II – Action 28	November 11, 2013, DHS Policy Memorandum 602-0092 titled “Additional Guidance on Determining Periods of Admission for Foreign Nationals Previously Admitted as H-4 Nonimmigrants who are Seeking H-2 or H-3 Status.”	Not final agency action
Count II – Action 29	July 20, 1992, publication of interim rule in Federal Register (57 Fed. Reg. 31-954); and publication of December 11,	Barred by SOL

	2002, rule in the Federal Register (67 Fed. Reg. 76-256, codified at 8 C.F.R. § 212.1, 212.2, 212.3)	
Count II – Action 30	Categorical Exclusion determination in promulgating 8 CFR § 214.2(f)	Not the subject of this motion to dismiss
Count II – Action 31	March 24, 2015, DHS Policy Memorandum 602-0111 titled “L-1B Adjudications Policy.”	Not final agency action
Count II – Action 32	September 17, 2007, publication of rule in the Federal Register (72 Fed. Reg. 53014) and December 12, 2008, update to rule (codified at 8 C.F.R. § 245.24)	Barred by SOL
Count II – Action 33	Newspaper article purporting to discuss a change in DHS policy	Not final agency action
Count III – All Actions	Plaintiffs allege that all 33 actions require a Programmatic EIS	Claim fails under 5 U.S.C. § 706(1), (plaintiffs fail to show that DHS failed to take a <i>discrete</i> agency action that it was <i>required</i> to take)
Count IV	Categorical Exclusion determination in issuing a final rule on the STEM OPT Program at 81 FR 13040	Not the subject of this motion to dismiss
Count V	EA issued in 2014 in response to President Obama’s memorandum asking agencies to consider the humanitarian aspects of a large influx of unaccompanied children across the southwest border	Not the subject of this motion to dismiss

EXHIBIT

2

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

3 WHITEWATER DRAW NATURAL
4 RESOURCE CONSERVATION
5 DISTRICT, et al.,

6 Plaintiffs,

7 v.

8 JOHN F. KELLY, et al.,

9 Defendants.

No. 3:16-cv-2583

DECLARATION OF
Sue Armstrong

10 I, Sue Armstrong, pursuant to 28 U.S.C § 1746, declare as follows:

- 11 1. I am the Chief of Staff of the Executive Order Task Force, United States
12 Department of Homeland Security (DHS or the Department) and have served in
13 this position since May 1, 2017. In this role, I am responsible for coordinating
14 and tracking the Department's deliverables under Executive Orders issued since
15 January 2017 and reporting status to senior leadership. I am also responsible
16 for coordinating the handling of policy documents associated with the
17 Executive Orders, determining whether there are new requirements for DHS
18 components, and determining whether the Department is directed to or directs
19 rescinding of prior guidance. This is the first declaration I have prepared for
20 this Court.
- 21 2. In my role as the Chief of Staff to the Executive Order Task Force, I am
22 familiar with Executive Order ("EO") 13767 titled "Border Security and
23 Immigration Enforcement Improvements" and EO 13768 titled "Enhancing
24 Public Safety in the Interior of the United States," both issued by President
25 Trump on January 25, 2017.
- 26 3. As a result of EOs 13767 and 13768 and subsequent implementation actions, I
27 am aware that the following policy documents or guidance memoranda, as
28

1 identified in Plaintiffs' Complaint, have been rescinded, superseded,
2 withdrawn, or are otherwise no longer in effect:

- 3 a. Action 7: July 26, 2016, announcement related to the Central American
4 Minors Refugee and Parole Program. This action has been partially
5 rescinded, consistent with EO 13767. The Acting Secretary of DHS
6 rescinded the Central American Minors Parole Program on August 16,
7 2017 with the publication of a notice in the federal register. 82 Fed. Reg.
8 38926 (Aug. 16, 2017). The Central American Minors Refugee Program
9 remains in place;
- 10 b. Action 12. March 2, 2011, DHS Policy Memorandum 10072.1 titled
11 "Civil Immigration Enforcement: Priorities for the Apprehension,
12 Detention and Removal of Aliens." This action was rescinded by an
13 implementation memo issued by former Secretary John F. Kelly on
14 February 20, 2017, associated with EO 13767. This action was also
15 previously rescinded by the former DHS Secretary;
- 16 c. Action 13. June 17, 2011, DHS Policy Memorandum 10075.1 titled
17 "Exercising Prosecutorial Discretion Consistent with the Civil
18 Immigration Enforcement Priorities of the Agency for the Apprehension,
19 Detention and Removal of Aliens." This action was rescinded by an
20 implementation memo issued by former Secretary John F. Kelly on
21 February 20, 2017, associated with EO 13767. This action was also
22 previously rescinded by the former DHS Secretary;
- 23 d. Action 15. November 11, 2011, DHS Memorandum titled "Case by Case
24 Review of Incoming and Certain Pending Cases." This action was
25 rescinded by an implementation memo issued by former Secretary John
26 F. Kelly on February 20, 2017, associated with EO 13767. This action
27 was also previously rescinded by the former DHS Secretary;
- 28


- 1 e. Action 17. December 29, 2011, announcement of a new detainer form;
- 2 f. Action 18. December 12, 2012, DHS Memorandum titled "Civil
- 3 Immigration Enforcement: Guidance on the Use of Detainers in the
- 4 Federal, State, Local and Tribal Criminal Justice Systems." This action
- 5 was rescinded by an implementation memo issued by former Secretary
- 6 John F. Kelly on February 20, 2017, associated with EO 13767. This
- 7 action was also previously rescinded by the former DHS Secretary;
- 8 g. Action 19. June 15, 2012 DHS Memorandum issued by Janet Napolitano
- 9 titled "Exercising Prosecutorial Discretion with Respect to Individuals
- 10 Who Came to the United States as Children" and June 15, 2012
- 11 Memorandum issued by John Morton titled "Secretary Napolitano's
- 12 Memorandum Concerning the Exercise of Prosecutorial Discretion for
- 13 Certain Removable Individuals who Entered the United States as a
- 14 Child." The memorandum issued by Janet Napolitano was completely
- 15 rescinded by a memorandum issued by Acting Secretary Elaine C. Duke
- 16 on September 5, 2017, however the Duke memorandum does provide for
- 17 an orderly wind-down of the effects of the Deferred Action for
- 18 Childhood Arrivals policy. The memorandum issued by John Morton
- 19 was partially rescinded by the September 5, 2017 memorandum;
- 20 h. Actions 21 and 22. November 20, 2014, DHS Memorandum titled
- 21 "Exercising Prosecutorial Discretion with Respect to Individuals Who
- 22 Came to the United States as Children and with Respect to Certain
- 23 Individuals Who are the Parents of U.S. Citizens or Permanent
- 24 Residents." These actions were rescinded by an implementation memo
- 25 issued by former Secretary John F. Kelly on June 15, 2017, associated
- 26 with EO 13768;
- 27 i. Action 23. November 20, 2014, DHS Memorandum titled "Policies for
- 28 the Apprehension, Detention and Removal of Undocumented

1 Immigrants.” This action was rescinded by an implementation memo
2 issued by former Secretary John F. Kelly on June 15, 2017, associated
3 with EO 13768;

- 4 j. Action 24. November 20, 2014, DHS Memorandum titled “Secure
5 Communities.” This action was rescinded by an implementation memo
6 issued by former Secretary John F. Kelly on June 15, 2017, associated
7 with EO 13768.

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9 Pursuant to the provisions of 28 U.S.C. § 1746, I declare, under penalty of
10 perjury, and under the laws of the United States that the foregoing is true and correct.

11 Executed on this 5th day of October, 2017.

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15 Sue Armstrong
16 Chief of Staff
17 Executive Order Task Force
18 U.S. Department of Homeland Security
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